IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7941 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

NARESHBHAI LALJIBHAI SOLANKI

Appearance:

GOVERNMENT PLEADER for Petitioner

MR KAMLESH B MEHTA for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 23/01/2001

ORAL JUDGEMENT

The petitioner has challenged the validity of the award, dated 11.8.98 bearing Reference (LCJ) No.1657/98 passed by the Labour Court at Junagadh. By virtue of the said award, it has been directed that the petitioner should reinstate the respondent in service with

continuity of service and backwages.

2. Learned Asst.Govt.Pleader-Mr.Joshi has fairly submitted that, perhaps, on account of some negligence or mistake on the part of an officer or employee concerned of the petitioner, no evidence was led before the Labour Court, and therefore, the Labour Court was constrained to believe that the respondent was relieved without following legal procedure. As a matter of fact, it has been submitted by the learned Asst.Govt.Pleader that the respondent was working as a daily wager and his services were taken by the petitioner as and when there was work of a painter. It has been, therefore, submitted by him that an opportunity be given to the petitioner to lead evidence and to place proper facts before the Labour Court so that after considering all the relevant facts and evidence, the matter can be decided afresh. It has been submitted by him that at present the respondent is engaged as and when there is work of a daily wager painter at the place where the respondent was formerly working.

3. On the other hand, learned Advocate Mr.Mehta appearing for the respondent has submitted that sufficient opportunities were given to the petitioner to lead evidence, but for the reasons best known to the petitioner authority, no evidence was led on behalf of the petitioner, and therefore, ultimately the Labour Court was constrained to pass the award in favour of the respondent. It has been submitted by him that at present the respondent is given work of painting as and when there is work. It has been submitted by him that if the matter is remanded for any reason, the respondent should be sufficiently compensated because for no fault on his part the respondent will have to appear before the Labour Court and that would put him to unnecessary expenses.

4. I have heard the learned advocates and have perused the impugned award. Upon perusal of the award, it is clear that the petitioner had not led any evidence before the Labour Court to show that the respondent had left the job at his own sweet-will. No evidence was led before the Labour Court to show that the respondent was a daily wager and his services were taken by the petitioner as and when there was work with regard to painting.

5. Looking to the facts and circumstances of the case, in my opinion, if would be just and proper if the case is remanded to the Labour Court so that one more chance can be given to the petitioner for adducing necessary evidence.

6. In the circumstances, the impugned award is quashed and set aside with a direction to the Labour Court to hear the case again. It is, however, directed that a sum of Rs.5,000/- shall be paid to the respondent by the petitioner by way of costs because the impugned award was passed only on account of default committed by the officers or employees of the petitioner.

7. In the instant case, the petitioner shall pay a sum of Rs.5,000/- to the respondent by way of costs. It is pertinent to note that the petitioner is the State of Gujarat. It would not be proper to put burden of somebody's negligence on the State of Gujarat. Therefore, it would be open to the petitioner to recover the amount of Rs.5,000/- paid towards costs to the respondent from the concerned erring officer. It is also directed that as and when there is work of a daily wager with regard to painting, the respondent shall be given priority so that during the pendency of the litigation he can earn his livelihood.

8. Rule is made absolute to the aforesaid extent. The impugned award is quashed and set aside with direction to the Labour Court to hear the concerned parties and decide the same afresh after considering the evidence which might be adduced by the petitioner before it.

23.1.2001 (A.R.DAVE,J)